



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE

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March 10, 2023

Matthew Voss, Senior Environmental Planner
Caltrans District 11
4050 Taylor Street, MS 242, MV
San Diego, California 92110
Matthew.Voss@dot.ca.gov

Subject: Interstate 805 South Pavement Rehabilitation and Asset Management Project (PROJECT); Draft Mitigated Negative Declaration (MND); SCH #2023020269

Dear Mr. Voss:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a Draft Mitigated Negative Declaration (MND) from the California Department of Transportation (Caltrans) for the Interstate 805 South Pavement Rehabilitation and Asset Management Project ("Project") pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines, § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (*Id.*, § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in "take", as defined by state law, of any species protected under the California Endangered Species Act (CESA) (Fish & Game Code, § 2050 et seq.), the Project proponent may seek related take authorization as provided by the Fish and Game Code. CDFW also administers the Natural Community Conservation Planning (NCCP) program. The cities of San Diego and Chula Vista participate in the NCCP program by implementing their approved Multiple Species Conservation Program (MSCP) Subarea Plans (SAPs).

Conserving California's Wildlife Since 1870

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PROJECT DESCRIPTION SUMMARY

Proponent: Caltrans

Objective: The objective of the Project is to restore Interstate 805 South (I-805) to a state of good repair to improve ride quality, minimize maintenance, and extend the service life of the existing pavement. Additionally, the Project would repair and upgrade bridges, drainages, safety elements, and roadside paving while improving mobility and complete streets.

Activities include repairing and installing approach slabs, rehabilitating existing culvert systems and installing new systems, replacing roadside signs, overhead signs, upgrading guardrail systems, landscaping, paving beyond gore areas, paving narrow areas, slope paving, installing mast arm ramp meters, upgrading and installing Intelligent Transportation Systems, upgrading existing non-standard curb ramps, constructing three auxiliary lanes, constructing a bicycle trail to connect to existing trails, and installing bicycle lanes. According to the April 2022 Biological Assessment (BA), most of the work will occur within the highway alignment, along the highway shoulder, and within the road prism. However, some work will occur outside these areas and will affect sensitive habitats.

To complete the bike path work, Caltrans proposes to construct a bicycle trail bridge across the Otay River at the existing I-805 Otay River Bridge location. The MND offers two design variations.

Variation 1 Hanging Bicycle Bridge

The hanging bicycle bridge would hang from the existing I-805 northbound bridge, connected via suspender cables underneath the existing Otay River Bridge, approximately 30 feet above the riverbed.

Variation 2 Multi-span Bicycle Bridge

The multi-span bicycle bridge would be constructed next to the existing I-805 northbound bridge, approximately 34 feet above the riverbed and 19 feet east of the existing Otay River Bridge. Three support piers would be placed into the riverbed approximately 108 feet apart.

Both variations would require construction of two retaining walls and a work platform across the river, supported by the existing bridge piers. Caltrans anticipates that the work and impact area for Variation 2 would be larger than required for Variation 1.

Location: The Project area includes I-805 from the I-805/Interstate 5 split in the south to the I-805/Interstate 15 split in the north, within the cities of San Diego, Chula Vista, and National City, in the County of San Diego. The total length of the Project is approximately 14.5 miles.

Biological Setting: Caltrans prepared a BA to analyze biological resources within the Project area. The BA focused primarily on impacts to federal Environmental Species Act (ESA)-listed species but provides some insight into CDFW sensitive species. Caltrans also prepared a Natural Environment Study (NES) for this MND.

The Biological Study Area (BSA) includes the 14.5-mile alignment of I-805 and a 300-foot area beyond the alignment. Although the BSA is dominated by developed land, the Project site

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contains suitable habitat to support a variety of sensitive wildlife species, including those covered under the MSCP, CESA-listed species, ESA-listed species, State Fully Protected (FP) species, California Species of Special Concern (SSC), and CDFW Watch List Species (WL). Habitat types within the BSA include Diegan coastal sage scrub (CSS), maritime succulent scrub, southern mixed chaparral, non-native grassland, freshwater marsh, southern cottonwood-willow riparian forest, riverine, and disturbed wetland. Additionally, there are several locations where the BSA is adjacent to or includes some portions of Multiple Habitat Planning Areas (MHPA) associated with the MSCP.

Special Status Plants: According to the California Natural Diversity Database (CNDDDB), 20 special-status plant species are documented within the BSA including: golden aster (*Heterotheca sessiliflora*; California Rare Plant Rank (CRPR) 1.B1), California adolphia (*Adolphia californica*; CRPR 2B.1), Campbell's liverwort (*Geothallus tuberosus*; CRPR 1B.1), cliff spurge (*Euphorbia misera*; CRPR 2B.2), decumbent goldenbush (*Isocoma menziesii* var. *decumbens*; 2B.2), golden spined cereus (*Bergerocactus emoryi*; CRPR 2B.2), long-spined spineflower (*Chorizanthe polygonoides* var. *longispina*; CRPR 1B.2), mud nama (*Nama stenocarpa*; CRPR 2B.2), Nuttall's scrub oak (*Quercus dumosa*; CRPR 1B.1), Orcutt's bird's-beak (*Dicranostegia orcuttiana*; CRPR 2B.1), Palmer's goldenbush (*Ericameria palmeri*; CRPR 1B.1), San Diego barrel cactus (*Ferocactus viridescens*; CRPR 2B.1), San Diego bursage (*Ambrosia chenopodiifolia*; CRPR 2B.1), San Diego marsh-elder (*Iva hayesiana*; CRPR 2B.2), singlewhorl burrobush (*Ambrosia monogyra*; CRPR 2B.2), small-leaved rose (*Rosa minutifolia*; CESA-endangered), snake cholla (*Cylindropuntia californica* var. *californica*; CRPR 1B.1), south coast salt scale (*Atriplex pacifica*; CRPR 1B.2), variegated dudleya (*Dudleya variegata*; CRPR 1B.2), and wart-stemmed ceanothus (*Ceanothus verrucosus*; CRPR 2B.2).

Special Status Animals: According to CNDDDB, 13 special status animal species are documented within the BSA:

- Amphibians (1): western spadefoot (*Spea hammondi*; SSC)
- Reptiles (4): orange-throated whiptail (*Aspidoscelis hyperythra*; WL), red diamond rattlesnake (*Crotalus ruber*; SSC), southern California legless lizard (*Anniella stebbinsi*; SSC), and two-striped gartersnake (*Thamnophis hammondi*; SSC)
- Birds (5): light-footed Ridgway's rail (*Rallus obsoletus levipes*; CESA-endangered, ESA-endangered, FP), least Bell's vireo (*Vireo bellii pusillus*; vireo, ESA-endangered, CESA-endangered), tricolored blackbird (*Agelaius tricolor*; CESA-threatened), coastal cactus wren (*Campylorhynchus brunneicapillus sandiegensis*; SSC), and coastal California gnatcatcher (*Polioptila californica californica*; ESA-threatened, SSC)
- Mammals (3): big free-tailed bat (*Nyctinomops macrotis*; SSC), pallid bat (*Antrozous pallidus*; SSC), and western mastiff bat (*Eumops perotis californicus*; SSC)

Caltrans conducted preliminary surveys on October 11 and December 12, 2021. The BA indicates additional surveys would occur during spring and summer 2022. As of the date this letter was drafted, Caltrans has not provided CDFW with the 2022 survey results.

Additionally, although not addressed in the MND, the BSA contains two stream crossings with historical or potential for presence of southern California steelhead (*Oncorhynchus mykiss irideus*; steelhead, CESA-candidate), one of which the Project would impact.

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Coastal California Gnatcatcher

Protections for coastal California gnatcatcher include those offered by international treaty under the Federal Migratory Bird Treaty Act (MBTA) of 1918 (Code of Federal Regulations, Title 50, § 10.13) and sections 3503 and 3513 of the California Fish and Game Code.

According to the BA, coastal California gnatcatcher has been detected adjacent to the Project area southeast of the Palm Avenue access ramp to northbound 805 and the area at the westbound H Street onramp to northbound I-805. Presence/absence surveys and nest surveys will occur prior to planning finalization and construction phases of the Project. The BA discloses that temporary impacts would occur within 500 feet of detections.

Least Bell's Vireo

Protections for least Bell's vireo include take as defined by State law and those offered by international treaty under the Federal Migratory Bird Treaty Act (MBTA) of 1918 (Code of Federal Regulations, Title 50, § 10.13) and sections 3503 and 3513 of the California Fish and Game Code.

Least Bell's vireo is known to occur within the BSA around the Otay River Bridge and Sweetwater River riparian areas. According to the MND, in 2022, two male vireos, representing two pairs, were observed. Presence/absence surveys and nest surveys will occur prior to planning finalization and construction phases of the Project.

Light-footed Ridgway's Rail

Caltrans indicated that light-footed Ridgway's rail occur at the Sweetwater River, and that Caltrans is not proposing any work at Sweetwater River for this project. Therefore, no impacts are anticipated (R. Abrams, personal communication).

Vegetation Impacts: The MND indicates that the Project would result in approximately 0.88 acre of CSS and 0.65 acre of southern cottonwood-willow riparian forest. A subset of those impacts is associated with the bicycle bridge construction at the Otay River Bridge. Variation 1 would result in temporary impacts to 0.30 acre of CSS and 0.44 acre of southern cottonwood-willow riparian forest. No permanent impacts would occur. Variation 2 would result in temporary impacts to 0.30 acre of CSS and 1.14 acres of southern cottonwood-willow riparian forest. Additionally, Variation 2 would result in permanent impacts to 0.0009 acre of riparian habitat due to the installation of the new bridge piers.

Mitigation: Caltrans proposes to offset permanent impacts to 0.0009 acre of riparian habitat through the purchase of 0.0027 acre of riparian forest habitat suitable for vireos at the Rancho San Diego mitigation bank. According to the US Army Corps' Regulatory In-lie Fee and Bank Information Tracking System, the County of San Diego, San Diego Association of Governments, and Caltrans jointly own the bank for their exclusive use. The Project would restore temporary impacts on site.

Timeframe: Caltrans expects construction will occur between January 2025 and April 2026.

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COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Caltrans in adequately identifying, avoiding, and/or mitigating the Project's significant, or potentially significant, direct, and indirect impacts on fish and wildlife (biological) resources.

I. Otay River Bicycle Bridge Variations

The MND proposes two design variations for the bicycle bridge crossing the Otay River, as discussed in the Project Description above. Given the information provided in the MND and BA, Variation 1 appears to result in fewer impacts to biological resources. In this variation the bridge would be suspended below the existing I-805 bridge and would not include any permanent structures in the river or any permanent impacts. Therefore, CDFW recommends Caltrans select this variation.

II. Fish Passage

Fish and Game Code section 5901 prohibits the construction or maintenance of any structure that prevents or impedes fish passage, pursuant to the Fish and Game code definition of "fish." Additionally southern California steelhead is a candidate Species for CESA listing. As such, the species is granted the full protection of a CESA-listed species until such time a final decision is made by the Fish and Game Commission to list or not list the species. Take of any endangered, threatened, or candidate species that results from the Project is prohibited, except as authorized by State law (Fish & G. Code, §§ 86, 2062, 2067, 2068, 2080, 2085; Cal. Code Regs., tit. 14, § 786.9).

The Project limits include the I-805 Otay River Bridge (PAD #75455). The MND does not address fish passage at this location. According to CDFW's anadromous fisheries program, the bridge is within the limits of anadromy, rainbow trout (the same species as steelhead) are known to occur in the areas nearby, and, if no anthropogenic barriers exist downstream, nothing would prevent trout or steelhead from accessing this location (K. Evans, CDFW, personal communication). Therefore, CDFW recommends that the MND be revised to include a thorough discussion and analysis of the application of Fish and Game Code sections 5901 and 2050 et seq.

III. Bats

According to the BA Appendix B Species List, CNDDDB records indicate detections of big free-tailed bat, pallid bat, and western mastiff bat in the area. However, the MND does not include a bat roosting habitat assessment or discussion of potential impacts to bats nor does it provide avoidance and minimization measures.

Bridges, culverts, and other infrastructure elements provide habitat for multiple bat species. Construction work and permanent anthropogenic activities at or near a structure occupied by roosting bats may result in impacts to bats due to disturbance, roost abandonment, predation, or direct take.

The MND proposes to construct a bicycle bridge over the Otay River, either suspended under the existing I-805 bridge, or parallel to it. If the existing bridge contains potential habitat and is occupied by roosting bat species, they could be directly impacted from both

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the construction activities and the permanent use of the bicycle bridge. Additional structures also occur within the BSA, including multiple stream crossings.

CDFW recommends that the MND be revised to include a thorough assessment for bat habitat; potential impacts; and avoidance, minimization, and mitigation measures as appropriate.

IV. Crotch Bumble Bee

Crotch bumble bee is a candidate species for potential listing under CESA. As such, the species is granted the full protection of a CESA-listed species until such time a final decision is made by the Fish and Game Commission to list or not list the species. Take of any endangered, threatened, or candidate species that results from the Project is prohibited, except as authorized by State law (Fish & G. Code, §§ 86, 2062, 2067, 2068, 2080, 2085; Cal. Code Regs., tit. 14, § 786.9). In addition, Crotch bumble bee has a State ranking of S1/S2. This means that the Crotch bumble bee is considered critically imperiled or imperiled and is extremely rare (often five or fewer populations).

Suitable Crotch bumble bee habitat is far-ranging because they are generalist foragers and can utilize many different plant and vegetation communities. Suitable habitat includes areas of grasslands, coastal sage scrub, and arid desertscape that contain requisite habitat elements, such as small mammal burrows. Because CSS occurs in the BSA, suitable habitat could potentially exist within the BSA.

Construction projects may cause direct mortality to Crotch bumble bee or injury to adults, eggs, and larva. Impacts may also cause burrow collapse, nest abandonment, and reduced nest success. The MND does not address Crotch bumble bee. Given the lack of an NES, it is unclear whether the species was considered during the biological assessment. CDFW recommends that the MND be revised to include a discussion of Crotch bumble bee, disclose if suitable habitat is present within the BSA and describe any potential impacts to the habitat or species. If potential impacts exist, avoidance, minimization, and/or mitigation measures should be provided.

V. MHPAs for City of San Diego MSCP

The BSA is adjacent to or includes some portions of the cities of San Diego and Chula Vista MHPAs. MHPAs generally comprise habitat or buffer areas considered important to providing a viable preserve network. The MND does not include a discussion of the MHPAs and if any potential impacts are anticipated. CDFW recommends that the MND be revised to include such a discussion and that the Project maintains consistency with land use adjacency guidelines for the cities of San Diego's and Chula Vista's MSCP Subarea Plans if working within or adjacent to any preserve or MHPA areas. We also recommend that Caltrans coordinate directly with the County of San Diego and cities to ensure that the MND's proposed mitigation measures align with the local SAPs.

VI. 2022 Field Surveys

CNDDDB provides reported detections of sensitive species and habitats. This offers a historical context for assessing presence of such species for the Project. However, current surveys are necessary to determine potential impacts resulting from Project activities.

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CDFW recommends the MND be revised to include the 2022 survey reports.

VII. Least Bell's Vireo

Caltrans obtained a Biological Opinion (BO) from the FWS on October 13, 2022. According to the BO, the Project will result in up to 1.14 acres of temporary impacts to riparian habitat and up to 0.0009 acre of permanent impacts to riparian habitat suitable for vireo breeding and foraging. In addition to offsetting the permanent impacts with conservation of 0.0027 acre of riparian forest habitat suitable for vireos at the Rancho San Diego mitigation bank, or another off-site location or mitigation bank approved by CDFW and FWS, the following measures will be implemented.

- Prior to initiating project work, three preconstruction surveys will be conducted within all suitable vireo habitat in or within 500 feet of the I-805 South Asset Management Project footprint, within 30 days prior to initiation of vegetation removal activities.
- Clearing and grubbing of riparian habitats will be conducted between September 1 and March 14 to avoid the breeding season (or sooner than September 1 if the project biologist demonstrates that all nesting is complete).
- Project construction adjacent to the species' use area will occur between August and December of 2024. If construction, excluding clearing and grubbing, is necessary during the breeding season (March 15–August 31) and that construction will generate noise in excess of 60 dBA hourly, or ambient noise levels, whichever is greater, within vireo nesting habitat, measures will be implemented to reduce noise disturbance to vireos. A noise abatement plan will be submitted to FWS and CDFW for review and approval 30 days prior to commencing project work.
- If nighttime construction is necessary, all project lighting (e.g., staging areas, equipment storage sites, roadway) will be of the lowest illumination necessary for human safety, selectively placed, and directed onto the construction site and away from sensitive habitats. Light glare shields will be used to reduce the extent of illumination into sensitive habitats.
- Permanent project lighting will be of the lowest illumination necessary for safety and will be directed toward the bridge and paved roadway and away from sensitive habitats. Light glare shields will be used to reduce the extent of illumination sensitive habitats.

VIII. Coastal California Gnatcatcher

Coastal California gnatcatcher occupied habitat is present adjacent to the Project area at the westbound H Street onramp to northbound I-805 and along the bike path at the westbound Palm onramp to northbound I-805. Temporary impacts of 0.88 acre will occur within 500 feet of the species detections.

To minimize impacts to coastal California gnatcatcher the MND indicates that clearing and grubbing of habitat will be conducted between September 1 and February 15 (or sooner than September 1 if the project biologist demonstrates that all nesting is complete), to the extent possible. However, the MND later states that vegetation clearing in and adjacent to

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CSS would occur outside the species' breeding season to the extent possible. If not possible, a pre-activity survey would be conducted within seven days prior to starting work to identify any nesting birds within 300 feet of the Project area. If nesting birds are detected, the nests will be flagged and a 300-foot buffer implemented and avoided until either the nest is confirmed to be inactive, the breeding season ends, or a noise barrier or berm is constructed at the edge of the construction footprint and/or around the piece of equipment to reduce noise levels to ambient.

CDFW recommends that the MND be revised to clarify which of the two measures will be implemented for coastal California gnatcatcher to avoid confusion during the clearing and grubbing activities.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the CNDDDB. The CNDDDB field survey form can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB_FieldSurveyForm.pdf. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp.

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying Project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

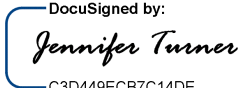
CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist Caltrans in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Jennifer Turner, Senior Environmental Scientist (Supervisory), at (858) 539-9109 or Jennifer.Turner@wildlife.ca.gov.

Sincerely,

DocuSigned by:



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Jennifer Turner, acting for:

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ec: CDFW

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REFERENCES

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CDFW recommends the following language to be incorporated into a future environmental document for the Project.

Recommendations			
	Mitigation Measure	Timing	Responsible Party
REC-BIO-2-Select Bridge Variation 1	Based on the information available, Caltrans should opt for bicycle bridge Variation 1.	Prior to finalizing the MND	Caltrans
REC-BIO-3-Steelhead Passage Analysis	Caltrans should revise the MND to include a thorough discussion and analysis of the application to the Project of Fish and Game Code sections 5901 and 2050 et seq.	Prior to finalizing the MND	Caltrans
REC-BIO-4-Steelhead Barrier Detailed Assessments	If any steelhead barriers exist at structures affected by the Project, the MND should indicate that Caltrans will provide CDFW with a detailed assessment of the above crossings, prior to commencing with Project designs.	Prior to finalizing the MND	Caltrans
REC-BIO-6-Bats	Caltrans should revise the MND to include a thorough assessment for bat habitat; potential impacts; and avoidance, minimization, and mitigation measures as appropriate.	Prior to finalizing the MND	Caltrans
REC-BIO-7-Crotch Bumble Bee	Caltrans should revise the MND to include a discussion of Crotch bumble bee, disclose if suitable habitat is present	Prior to finalizing the MND	Caltrans

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	<p>within the BSA, describe any potential impacts to the habitat or species, and if potential impacts exist, provide avoidance, minimization, and mitigation measures.</p>		
<p>REC-BIO-8- Multiple Habitat Planning Areas</p>	<p>Caltrans should revise the MND to include a discussion of the MHPAs adjacent to or within the BSA and details regarding how the Project will maintain consistency with land use adjacency guidelines for the Cities of San Diego's and Chula Vista's MSCP Subarea Plans if working within or adjacent to any preserve or future preserve areas.</p>	<p>Prior to finalizing the MND</p>	<p>Caltrans</p>
<p>REC-BIO-9- Coordinate with the County and Cities</p>	<p>Caltrans should coordinate with the County of San Diego and cities to ensure that their mitigation measures align with the local SAPs.</p>	<p>Prior to finalizing the MND</p>	<p>Caltrans</p>
<p>REC-BIO-10-2022 Field Surveys</p>	<p>Caltrans should revise the MND to include the 2022 survey reports or results.</p>	<p>Prior to finalizing the MND</p>	<p>Caltrans</p>
<p>REC-BIO-11- Vegetation Clearing and Coastal California Gnatcatcher Breeding Season</p>	<p>CDFW recommends that the MND be revised to clarify whether vegetation clearing would be strictly prohibited during the coastal California gnatcatcher breeding season or be allowed with a pre-construction survey and 300-foot buffer around any nest detections.</p>		